

HASKELL GREER, et al v. CITY OF HIGHLAND PARK, et al

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HASKELL G. GREER, KIM R. GREER
ASHLEY GREER, CATERA B. GREER,
KAILAA GREER, and ALEXANDER J.
LAWRENCE,

Plaintiffs,

Case No. 15-12444

-vs-

Detroit, Michigan

CITY OF HIGHLAND PARK, a Municipal
Corporation, HIGHLAND PARK POLICE
DEPARTMENT, CHIEF KEVIN CONEY,
SERGEANT RONALD DUPUIS II,
WILLIAM MELENDEZ, BRIAN SHAFER,
ERIC TAYLOR, CHARLES GARDNER,
JEREMIAH HALL, JAMES MCMAHON,
HOLLIS SMITH, ALLISON ASKIA,
CHRISTOPHER ZEULLIG, TYRELL WHITE,
and HEATHER HOLCOMBE,

August 29, 2018

Defendants.

TRANSCRIPT OF SETTLEMENT CONFERENCE HEARING
BEFORE THE HONORABLE ELIZABETH A. STAFFORD
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:

Jeffrey T. Stewart
Seikaly Stewart & Bennett P.C.
30445 Northwestern Highway, Suite 250
Farmington Hills, MI 48334

1 APPEARANCES CONTINUED:

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3 For the Defendants:

James W. McGinnis
985 E. Jefferson Avenue, Suite 100
Detroit, MI 48207

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23 TRANSCRIPT PRODUCED FROM DIGITAL VOICE RECORDING
24 TRANSCRIBER NOT PRESENT AT LIVE PROCEEDINGS
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HASKELL GREER, et al v. CITY OF HIGHLAND PARK, et al

Detroit, Michigan

Wednesday, August 29, 2018

(At about 12:57 p.m.)

(Call to Order of the Court)

THE CLERK OF THE COURT: The Court calls case number 15-12444, Haskell G. Greer, et al versus City of Highland Park, et al. Counsel, please state your appearances.

MR. STEWART: Good afternoon, Your Honor. Jeffrey Stewart appearing on behalf of Plaintiffs.

MR. MCGINNIS: May it please the Court. James McGinnis appearing on behalf of Defendants.

THE COURT: Good afternoon. Mr. McGinnis, who is here with you today?

MR. MCGINNIS: Your Honor, I have with me today Miss Kathy Square who's the City Administrator for the City of Highland Park and she has authority to enter into a Settlement Agreement.

THE COURT: Thank you. Mr. Stewart, who is with you today?

MR. STEWART: With me today is Mr. Haskell Greer.

THE COURT: Speak into the microphone please because this is being recorded.

MR. STEWART: Mr. Haskell Greer is here on behalf of everyone on the Plaintiff's side of the caption with the

1 exception of Alexander Lawrence who is here personally for his
2 own interests. However, the Agreement that we have been
3 discussing has included both of them, so it's inclusive of all
4 Plaintiffs.

5 THE COURT: And Mr. Greer has settlement authority on
6 behalf of the other Plaintiffs other than Mr. Lawrence?

7 MR. STEWART: He does, Your Honor. That would
8 include the minor child with the caveat that I expressed to the
9 Court off the record and that is that any minor settlement must
10 ultimately have Court approval. But as far as it goes, he has
11 authority as Kailaa's father to make the overall deal and what
12 we will need Court approval on will be allocation from the
13 total net proceeds to the minor.

14 THE COURT: Okay. The parties have been involved in
15 settlement discussions since about 10 a.m. this morning with
16 the assistance of the Court, is that true?

17 MR. STEWART: It is, Your Honor.

18 THE COURT: Have the parties arrived at a settlement?

19 MR. STEWART: We believe we have, Your Honor.

20 THE COURT: Who will placing the settlement, the terms
21 of the settlement on the record?

22 MR. STEWART: Mr. McGinnis will do that.

23 MR. MCGINNIS: Again, Your Honor, James McGinnis on
24 behalf of the Defendants. We've negotiated a settlement with
25 the Plaintiffs. The terms of the settlement are as follows:

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1 The lump sum or the total sum --excuse me -- is \$110,000.
2 That sum will be paid over three installments. The installment
3 dates, due dates are October the 15th, 2018, February 15th of
4 2019 and May the 15th of 2019.

5 As the Court is well aware that this settlement is entered
6 into on behalf of the City of Highland Park, a municipality and
7 only the City Council can bind the municipality to a contract,
8 so that this Settlement is subject to Council approval. Miss
9 Kathy Square is with me today. She has authorized me on behalf
10 of the City to enter into this Agreement. It's our
11 understanding that the Council will meet some time in September
12 and we would then get word of whether or not they have approved
13 the Settlement.

14 We will enter into a Release and Settlement Agreement with
15 the Plaintiff which will incorporate the terms of the
16 settlement as put on the record.

17 The matter will be dismissed pursuant to the Settlement
18 Agreement, with the Plaintiff having the right to come back
19 before the Court and reopen the case should the -- there be a
20 breach of the Agreement, and the Court would reserve the right
21 to enforce the terms of the Agreement.

22 THE COURT: Mr. Stewart, are those the terms that you
23 understand?

24 MR. STEWART: As far as they go, yes, Your Honor.
25 I'm not in disagreement with anything that Mr. McGinnis has

1 said, but I would like to add some clarification on a couple of
2 points.

3 THE COURT: Okay.

4 MR. STEWART: One is that in the event of a breach,
5 the understanding is that the Plaintiff would have the option
6 of simply enforcing the Agreement according to its terms or
7 reinstating the case with Statutes of Limitations have been
8 tolled in the interim. The Release Agreement would have to be
9 subject within its own terms; that's saying that if there's a
10 breach, then the parties agree to set aside the Release and
11 allow the case to be reinstated in its entirety. The overall
12 objective of this is to provide protection to the individual
13 Defendants by having them included in the settlement and the
14 release, but also preserve the Plaintiffs' rights against all
15 Defendants in the event the City was unable or unwilling to
16 live up to its obligations.

17 The other clarification I would add is that -- and as the
18 Court knows, the minor child has to have Court approval of the
19 amount of money that goes to that child. We are unclear in our
20 own minds because this is a Federal Court matter, not a State
21 Court matter, I don't know whether we will seek approval from
22 this Court for that or whether we'll seek it from the Oakland
23 County Probate Court, but we will need approval from someone
24 for the amount of the money that is going to be allocated to
25 the child. That in turn will require a conservatorship. We

1 are not trying to make this Settlement conditioned on any of
2 that. That will all happen some way or the other. So we are
3 entering into the settlement in good faith today, but I
4 indicate to the Court that the minor's portion will be subject
5 to Court approval.

6 THE COURT: Thank you. Mr. McGinnis.

7 MR. MCGINNIS: In my mind that presents somewhat of a
8 problem, Your Honor, because if Highland Park were to approve
9 this Settlement and pay out -- make two payments and default on
10 the third payment, then Plaintiff would have the option of
11 keeping the two payments, reopening the case and suing the
12 present Defendants and it's unclear to me should that occur
13 what would happen to the two payments already made, which is
14 why I believe that the Court would reserve the power to enforce
15 the terms of the Settlement and require Highland Park to make
16 the third payment as opposed to giving Plaintiff another bite
17 at the apple in terms of using the money that Highland Park has
18 paid to pursue a Judgment against it, so --

19 THE COURT: I will say, Mr. McGinnis, this is a new
20 interpretation of our discussion that I didn't anticipate.
21 What I understood was that the dismissal -- that the parties
22 would enter into dismissal, but if Highland Park did not
23 fulfill its obligations under the Agreement, that the
24 Plaintiffs would retain the right to reopen the case and
25 frankly, it's not something -- you're talking about a partial

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1 payment has been made. I also heard Mr. Stewart say that the
2 options would be whether to enforce -- seek enforcement of the
3 settlement amount or to reopen the case. If it's a matter of
4 forcing Highland Park to pay the balance --

5 MR. MCGINNIS: (Interjecting) We have no problem --

6 THE COURT: (Interjecting) I think that's something
7 that -- I think the usual terminology is that the Court retains
8 jurisdiction to enforce the Judgment. I think, Mr. Stewart,
9 that that is what you were saying.

10 MR. STEWART: Well, Your Honor, if the Court recalls
11 what we were concerned about is this, and I'm not suggesting
12 that anybody in this room is not acting in good faith. I'm
13 sure that when Mr. McGinnis says here is what he intend to do
14 and Miss Square is there and ready to agree to that, that's
15 what they believe and I'm not challenging that. Circumstances
16 can change.

17 Let's suppose for a moment that before the final payment
18 was made, that the City of Highland Park was perhaps forced
19 into bankruptcy without its (Inaudible) or did use (Inaudible).
20 I don't know that this Court would have the power to disregard
21 that bankruptcy and make the City make that final payment. I
22 think jurisdiction would be in the Bankruptcy Court at that
23 point and there wouldn't be a thing anybody could do about it.

24 What we could do under what I thought was the arrangement
25 that the Court discussed with us was have the option of saying

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1 fine, then we will reopen the case because the individuals will
2 otherwise have gotten an unconditional release today and our
3 best case is against the individuals -- we're giving that up.

4 THE COURT: Mr. Stewart, if that happened wouldn't
5 the litigation go before the Bankruptcy Court anyway?

6 MR. STEWART: Not as to the individuals. Oh, no.

7 THE COURT: I think so. You're saying as to the
8 individual Defendants, individual officers.

9 MR. STEWART: Correct. So if what Mr. McGinnis is
10 saying is that just for making the --

11 THE COURT: (Interjecting) So you think that they
12 would sever the case? Because I mean Highland Park is a party.
13 So to the extent that Highland Park is a party, you think that
14 the litigation against Highland Park would go to bankruptcy,
15 but the litigation against individual officers would stay in
16 this court?

17 MR. STEWART: It might, and the worst thing that could
18 happen is that somebody could say, Mr. Stewart, take your
19 choice. If you're going -- (Tape blank) Try to have your cake
20 and eat it to and have your claim against the City and against
21 the individuals, then you're going to do it in one court.
22 Maybe it's going to be bankruptcy; maybe it's going to be here.
23 At least then we have the option of saying fine, Highland Park
24 is in bankruptcy, we have gotten a couple of payments from
25 them, we'll dismiss them and just go to trial against the

1 individuals. But what I worry about is that I think that Mr.
2 McGinnis is saying that just by making a promise today without
3 dime one being paid, just by making the promise he's buying an
4 unconditional irrevocable release --

5 THE COURT: (Interjecting) That is absolutely not
6 what he said and I asked him about that and he said that was
7 not his intention. His intention was that if Highland Park
8 does not fulfill its end of the bargain, then the case would be
9 able to be reopened against all of the Defendants.

10 What I'm hearing the new wrinkle is if Highland Park has
11 made two payments but not a third, then what happens? That's
12 what I'm hearing. But I specifically asked Mr. McGinnis
13 whether he was saying by entering into this Agreement this was
14 a release of all of the officers and that if they didn't pay,
15 that there would be no recourse against the officers, and Mr.
16 McGinnis said to me no, his understanding would be that the
17 case would be allowed to be reopened period against all of the
18 Defendants. Mr. McGinnis, is that accurate?

19 MR. MCGINNIS: I thought, Your Honor, that if there
20 are two payments made --

21 THE COURT: (Interjecting) I'm not talking -- now like
22 I said, this is a new wrinkle. I'm just trying to -- we had a
23 discussion about if Highland Park did not pay whether entering
24 into this Agreement would release the officers, and you said
25 no, that's not what you intended.

1 MR. MCGINNIS: No.

2 THE COURT: If the case is reopened, it would be
3 reopened against all the Defendants. Is that accurate?

4 MR. MCGINNIS: That is correct, but reopened to
5 enforce the settlement, not carte blanche to pursue all claims
6 against all individuals. That we have a Settlement Agreement
7 of \$110,000. If they're paid 70 or \$80,000, then their
8 collection against the City or against the officers, et cetera
9 would only be for that third amount that everybody -- all of
10 the Defendants would get credit for the two payments made and
11 the recovery would be the settlement amount. What I hear Mr.
12 Stewart saying is that it is reopened and --

13 THE COURT: (Interjecting) Okay, let me ask you this.
14 If, if -- under the terms of the Settlement if Mr. Stewart has
15 to reopen the case to enforce the Settlement, is it your
16 position that he could only enforce that against the City of
17 Highland Park or he could enforce it against any Defendant?

18 MR. MCGINNIS: It's a global Settlement, so I presume
19 --

20 THE COURT: (Interjecting) Is what --

21 MR. MCGINNIS: -- It would be against all of the
22 Defendants.

23 THE COURT: So -- okay. That's what I'm trying to
24 figure out.

25 MR. MCGINNIS: Yes.

1 THE COURT: Mr. Stewart, do you understand that? So
2 if the case has to be reopened to enforce the Settlement, then
3 you could enforce the Settlement against the individual
4 officers as well as the City of Highland Park.

5 MR. STEWART: That had not been my thought, but I
6 think that that's something that I'll just need a split second
7 to get my clients to agree to. Let me make sure I understand
8 what this would be. Ultimately what we're agreeing to is the
9 equivalent of a joint and several settlement in Judgment. We
10 won't enter it as a Judgment because we'll enter it as a
11 settlement, right? But if we have to reinstate the case, then
12 my understanding is we would then be entitled to enter a
13 Judgment for the balance remaining, giving full credit for
14 payments that have already been received, but we can enforce
15 that Judgment against any and all Defendants jointly and
16 severally. That I can recommend to Mr. Greer.

17 THE COURT: Really to be honest with you, I mean
18 that's a typical settlement. So you can certainly talk to Mr.
19 Greer and Mr. Lawrence about it, but that is -- that would be
20 the general -- that would make the settlement a typical
21 settlement.

22 MR. STEWART: Let me just step back. Yes, Your
23 Honor, that would be our understanding; that if there were a
24 default we could reopen for the purpose of collecting the
25 difference between what was promised to be paid and what has

1 been paid and we could enforce against any and all Defendants
2 jointly and severally.

3 THE COURT: Mr. McGinnis.

4 MR. MCGINNIS: That's my understanding.

5 THE COURT: Okay, thank you. Are there any other
6 terms of the Agreement that need to be placed on the record?

7 MR. STEWART: Only one, Your Honor. Mr. McGinnis did
8 point out to me that things happen sometimes with Council.

9 THE CLERK OF THE COURT: Would you speak closer to
10 the mic?

11 MR. STEWART: I have agreed on behalf of the
12 Plaintiffs that such a delay would not itself be a breach of
13 our Agreement provided that once it was approved we're on the
14 original schedule of October, February and May.

15 THE COURT: Okay. Mr. McGinnis.

16 MR. MCGINNIS: Correct.

17 THE COURT: All right. Okay. Mr. Greer, will you
18 approach the microphone please? Did you take part in the
19 settlement negotiations today?

20 MR. GREER: Yes, I did.

21 THE COURT: Did you hear the Court explain the
22 possible outcomes of going forward with the litigation and not
23 settling, which would include you possibly getting a big award
24 from a jury, getting a little award from a jury or getting a no
25 cause from a jury?

1 MR. GREER: Yes.

2 THE COURT: And we talked about the possibility that
3 litigation could linger for years if you did not agree to the
4 settlement?

5 MR. GREER: Yes.

6 THE COURT: Having waived all of the considerations
7 and including the possible outcomes, is it your decision to
8 agree to the settlement that you heard discussed on the record
9 today?

10 MR. GREER: Yes. Yes, it is.

11 THE COURT: Are you satisfied with the representation
12 that Mr. Stewart has provided you?

13 MR. GREER: Yes, I am.

14 THE COURT: Do you understand that by agreeing to this
15 settlement you are agreeing to a dismissal of your Complaint
16 against the Defendants with prejudice, meaning that you could
17 not bring the same Complaint or any claims arising out of the
18 same event in another case?

19 MR. GREER: Yes, that's correct.

20 THE COURT: Mr. Stewart, do you have other questions?

21 MR. STEWART: We also have Mr. Lawrence.

22 THE COURT: I understand. I'm just trying to finish
23 with Mr. Greer. Mr. McGinnis, do you have questions?

24 MR. MCGINNIS: I would just ask whether or not you
25 have discussed this case and your settlement posture with your

1 wife and your children?

2 MR. GREER: No, not as of yet. Me and my wife, we
3 have discussed anything future possibilities, but nothing that
4 -- nothing concrete.

5 MR. MCGINNIS: I know you haven't discussed the terms
6 of it because we just arrived at the terms, but have they
7 authorized you to enter into a settlement on their behalf?

8 MR. GREER: Yes, they have.

9 THE COURT: And you represent to the Court that you've
10 been authorized and you stand before the Court representing
11 yourself and your family relative to this settlement?

12 MR. GREER: Yes, that's correct.

13 MR. MCGINNIS: I have nothing further.

14 THE COURT: Thank you. Mr. Lawrence, will you come
15 forward please? Mr. Lawrence, did you also take part in the
16 settlement negotiations today?

17 MR. LAWRENCE: Yes, Your Honor.

18 THE COURT: Did you hear about the possible outcomes
19 if you did not agree to the settlement?

20 MR. LAWRENCE: Yes, Your Honor.

21 THE COURT: Having weighed all those considerations,
22 is it your decision to agree to the settlement that you heard
23 described in the record today?

24 MR. LAWRENCE: Yes, Your Honor.

25 THE COURT: Are you satisfied with the representation

1 of Mr. Stewart?

2 MR. LAWRENCE: Yes, Your Honor.

3 THE COURT: And do you understand that by agreeing to
4 this settlement any claim that you have brought against the
5 City of Highland Park and the police officers will end any
6 claim that you could have brought out of the same event that
7 led to you participating in this Complaint, you're agreeing to
8 dismiss that with prejudice?

9 MR. LAWRENCE: Yes, Your Honor.

10 THE COURT: Mr. Stewart, any other questions?

11 MR. STEWART: Mr. Lawrence, do you understand that
12 the allocation of the settlement proceeds will be used
13 (Inaudible -- too far away from microphone). Do you understand
14 ordinarily family members are able every once in a while
15 (Inaudible). Do you understand if that happens (Inaudible)

16 MR. LAWRENCE: Yes.

17 THE CLERK OF THE COURT: Mr. Stewart, can you move a
18 little closer?

19 MR. STEWART: -- Who is entitled to what out of the
20 settlement can make a binding decision, if the family
21 (Inaudible).

22 MR. LAWRENCE: Yes.

23 MR. STEWART: Your Honor, I've dealt with this family
24 a couple years. I would be shocked (Inaudible)

25 THE COURT: Thank you. Mr. McGinnis, do you have some

1 questions?

2 MR. MCGINNIS: Yes. Mr. Lawrence, you appreciate
3 that this is a settlement between you, the City of Highland
4 Park and these Highland Park police officers?

5 MR. LAWRENCE: Yes.

6 THE COURT: And there's been no allocation of an
7 amount to you specifically and should you have a disagreement
8 with your family, you can't come back against the City of
9 Highland Park or any of these police officers?

10 MR. LAWRENCE: Yes.

11 MR. MCGINNIS: That this is a complete and final
12 settlement subject to the limitations we put on the record
13 between you, the City of Highland Park and these police
14 officers?

15 MR. LAWRENCE: Yes.

16 MR. MCGINNIS: That's all.

17 THE COURT: Thank you.

18 MR. STEWART: Your Honor, does the Court have any
19 requirement as to how quickly we can (Inaudible). Perhaps we
20 should have on the record who will take the first shot at
21 (Inaudible).

22 THE COURT: Let me first ask, Mr. Greer. Thank you,
23 Mr. Lawrence. Mr. Greer, I just want to make sure that it's on
24 the record. Do you also agree that if there are any disputes
25 among your family members regarding the allocation of the

1 settlement proceeds, that the Court will have the authority to
2 make that decision?

3 MR. LAWRENCE: Oh, of course.

4 THE COURT: Thank you. And Miss Square.

5 MS. SQUARE: Yes, Your Honor.

6 THE COURT: Did you participate in the settlement
7 discussions today?

8 MS. SQUARE: Yes, I did.

9 THE COURT: And you also heard about the different
10 outcomes that could occur if this case went forward to trial?

11 MS. SQUARE: Yes, Your Honor.

12 THE COURT: With all of those considerations in mind,
13 did you agree to approve the total settlement for 110,000 with
14 the three installments that have been discussed in the other
15 terms?

16 MS. SQUARE: Yes.

17 THE COURT: Are you satisfied with the representation
18 of Mr. McGinnis?

19 MS. SQUARE: I am.

20 THE COURT: Thank you.

21 MS. SQUARE: Thank you, Your Honor.

22 THE COURT: So Mr. Stewart and Mr. McGinnis, have you
23 talked about who would be responsible for the initial draft of
24 the Settlement Agreement?

25 MR. MCGINNIS: We have not. I will take the

1 responsibility of getting it to Mr. Stewart by Friday.

2 MR. STEWART: That's agreeable.

3 THE COURT: I do want to make a record of what I told
4 both of you. There are some outstanding matters that might
5 need Court involvement. At this juncture, I don't have
6 jurisdiction to consider those. They will go to Judge Levy and
7 certainly I'm not trying to discourage you from taking those
8 matters to Judge Levy. If you wanted me to have the
9 jurisdiction to address those, then I would need both parties
10 to provide a Consent to Judge Levy to me entering final
11 Judgment. But again, that's a decision for all of you -- for
12 you all to make, not for me.

13 MR. STEWART: Understood, but I have had an
14 opportunity to consider this matter and for the Plaintiffs we
15 would be happy to have either Your Honor or Judge Levy handle
16 it, whichever the City is willing to agree to and it's somewhat
17 more convenient for the parties I know if the Court is doing it
18 because you're here, Judge Levy is in Ann Arbor, but I have no
19 preference. Mr. McGinnis, if you prefer to have Judge Levy,
20 that's fine.

21 MR. MCGINNIS: I would have no problem with this
22 Court handling that matter, Judge.

23 THE COURT: There are consent forms that you can get
24 from the Court's Internet. That would have to be presented to
25 Judge Levy and Judge Levy would have to sign off on it.

1 MR. MCGINNIS: Yes, Your Honor.

2 THE COURT: All right. Anything else before we close
3 the record today?

4 MR. STEWART: I want to thank the Court for its
5 efforts today. I don't know that we would have reached an
6 agreement without the help and participation of the Court.

7 THE COURT: Well, I thank all of you.

8 MR. MCGINNIS: Thank you, Your Honor. I appreciate
9 your effort.

10 THE COURT: Thank you. Have a good afternoon.

11 THE CLERK OF THE COURT: All rise. Court is in
12 recess.

13 (Proceedings adjourned at about 1:22 p.m.)

14 - - -

15 COURT REPORTER'S CERTIFICATION

16
17 STATE OF MICHIGAN)

18) SS.

19 COUNTY OF WAYNE)

20

21 I, Janice Coleman, Federal Official Court Reporter, in and
22 for the United States District Court for the Eastern District
23 of Michigan, do hereby certify that pursuant to Section 753,
24 Title 28, United States Code, that the foregoing is a true and
25 correct transcript of the digital sound recording, transcribed

1 to the best of my ability, which was held in this matter and
2 that the transcript page format is in conformance with the
3 regulations of the Judicial Conference of the United States.

4 /S/ JANICE COLEMAN

5 JANICE COLEMAN, CSR NO. 1095, RPR

6 FEDERAL OFFICIAL COURT REPORTER

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8 DATED: October 25, 2018
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